



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 2005-98; FAR Case 2017-004; Item III; Docket No. 2017-0004, Sequence No. 1]

RIN 9000-AN37

Federal Acquisition Regulation: Liquidated Damages Rate Adjustment

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to adjust for inflation the rate of liquidated damages assessed for violations of the overtime provisions of the Contract Work Hours and Safety Standards Act.

DATES: Effective: **[Insert date 30 days after date of publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat

Division at 202-501-4755. Please cite FAC 2005-98, FAR Case 2017-004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement the Department of Labor (DOL) interim final rule published in the Federal Register at 81 FR 43430 on July 1, 2016, the final rule published in the Federal Register at 82 FR 5373 on January 18, 2017, and subsequent adjustments for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) (section 701 of Pub. L. 114-74) (28 U.S.C. 2461 Note). The Inflation Adjustment Act requires agencies to adjust the levels of civil monetary penalties for inflation no later than January 15 of each year.

II. Discussion and Analysis

The DOL rule set the new rate of liquidated damages at \$25 per individual for each calendar day on which a laborer or mechanic employed under a contract or subcontract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act was required or permitted to

work in excess of the standard workweek of 40 hours without payment of the required overtime wages. Since this rate will continue to change annually for inflation, FAR 22.302, Liquidated Damages and Overtime Pay, and paragraph (b) of FAR clause 52.222-4, Contract Work Hours and Safety Standards—Overtime Compensation, are revised to reference the current liquidated damages rate, as specified in the DOL regulations at 29 CFR 5.5(b)(2). With this reference being incorporated in lieu of the dollar amount, an annual FAR change will not be necessary.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the FAR to refer to the rate of liquidated damages for violations of the overtime provisions of the Contract Work Hours and Safety Standards Act, in accordance with DOL regulations, rather than provide a specific dollar rate, because this rate is adjusted annually. The revisions do not add any new burdens or impact applicability of clauses and provisions at or below the simplified acquisition threshold, or to commercial items.

IV. Publication of this final rule for public comment is not required by statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this final FAR rule merely implements the requirements of the DOL rule that was published for comment - interim final rule published in the Federal Register at 81 FR 43430 on July 1, 2016, and the final rule published in the Federal Register at 82 FR 5373 on January 18, 2017. The new DOL rate is required by statute (the Inflation Adjustment Act); GSA, DoD, and NASA have no authority to change the rate.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: April 25, 2018.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22 and 52 as set forth below:

1. The authority citation for parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

2. Amend section 22.302 by revising paragraph (a) to read as follows:

22.302 Liquidated damages and overtime pay.

(a) When an overtime computation discloses underpayments, the responsible contractor or subcontractor must pay the affected employee any unpaid wages and pay liquidated damages to the Government. The contracting officer must assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the statute. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.222-4 by revising the date of the clause and paragraph (b) to read as follows:

52.222-4 Contract Work Hours and Safety Standards—Overtime Compensation.

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CONTRACT WORK HOURS AND SAFETY STANDARDS—OVERTIME COMPENSATION ([INSERT
ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER])

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(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b) (2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties

Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

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